IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 27639 of 2003(M)

PETITIONER:

NAIR SERVICE SOCIETY (NSS)
KARAYOGAM NO.673, POTHAMPALLY VADAKKU,
KUMARAPURAM REPRESENTED BY IS SECRETARY,
V. GOPINATHAPILLAI, CHITTEZHATH PADEETTATHIL
VEEDU, POTHAMPALLY NORTH MURI, KUMARAPURAM VILLAGE
KARTHIKAPPALLY TALUK.

BY ADV. SRI.K.SASIKUMAR

RESPONDENT:

R. KRISHNA PILLAI, S/O. PAREMESHWARA
PANIKER, SREEKRISHNAM, POTHAMPALLY
VADAKKUM MURI, KUMARAPURAM VILLAGE,
KARTHIKAPPALLY TALUK.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC NO.27639/03)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE PLAINT FILED BY THE RESPONDENT ON 23.1.2003 IN O.S.NO.18/03 OF THE SUB COURT, MAVELIKARA.

EXT.P2: TRUE COPY OF THE WRITTEN STATEMENT DATED 7.4.2003 IN O.S.18/03 OF THE SUB COURT, MAVELIKARA.

EXT.P3: TRUE COPY OF THE AFFIDAVIT AND PETITION FILED BY THE RESPONDENT AS I.A.320/03 IN O.S.18/03.

EXT.P4: TRUE COPY OF THE OBJECTION DATED 21.2.2003 FILED BY THE PETITIONER TO I.A.320/03 IN O.S.18/03 OF THE SUB COURT, MAVELIKARA.

EXT.P5: TRUE COPY OF THE ORDER DATED 12.8.03 IN I.A.320/03 IN O.S.18/03 OF THE SUB COURT, MAVELIKARA.

PIUS C. KURIAKOSE,J.

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W.P.(C) No. 27639 of 2003

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Dated: 30th May, 2007

JUDGMENT

Ext.P5 order of attachment passed by the learned Subordinate Judge is under challenge in this proceeding under Article 227 of the Constitution initiated by the respondent. The respondent in the application for attachment was the defendant in the suit, the N.S.S.Karayogam, Pothampally Vadakku, Kumarapuram represented by its Secretary.

2. Mr.K.Sasikumar, learned counsel for the petitioner invited my attention to the averment in paragraph 2 of Ext.P3 affidavit in support of the attachment application wherein it is alleged by the respondent that it has been understood by the respondent that the petitioner-defendant is going to run away from the place after disposing of the properties. Mr.Sasikumar submitted that being an institution and the properties sought to be attached being its own office, the above averment was made by the plaintiff in a most irresponsible manner. I notice from Ext.P5 that the learned Subordinate Judge himself found some force in the above submission which probably was made by Mr.Sasikumar's counter part before the Sub Court also.

3. Mr.George Varghese, learned counsel for the respondent would submit that being an institution the averment in para 2 of the affidavit had to be understood as being one confined to disposal of the property. The further averment that there is a threat of respondent running away could have been ignored.

4. Obviously the impugned order has been passed by the learned Subordinate Judge under Sub-rule (1) of Rule 6 of Order XXXVIII. A show-cause notice was issued to the petitioner on the attachment application by which he was also directed to furnish security. He did not furnish security and the cause which was shown by him was not found convincing. In terms of Order XLIII, Rule 1(q) all orders under Order XXXVIII, Rule 6 are appealable. But at this distance of time it will not be proper to dismiss the Writ Petition on that reason. I confirm the impugned order but with the modification that if the property which is ordered to be attached itself is offered as security by the petitioner, the learned Subordinate Judge will accept the security and effect the order of attachment. The suit it is seen is of the year 2003. The learned Subordinate Judge will special list the

suit for trial in the earliest available special list and dispose of the same in accordance with law.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**